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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,376	01/26/2005	Mitsuru Kurihara	264734US3PCT	7977

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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.		
1940 DUKE STREET		
ALEXANDRIA, VA 22314		

EXAMINER	
WALCZAK, DAVID J	

ART UNIT	PAPER NUMBER
3751	

NOTIFICATION DATE	DELIVERY MODE
10/24/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

Office Action Summary

Application No.

10/522,376

Applicant(s)

KURIHARA ET AL.

Examiner

David J. Walczak

Art Unit

3751

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.

Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5 and 7-20 is/are pending in the application.
- 4a) Of the above claim(s) 1,3-5,11-15,18 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-10,16,17 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 January 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 1/26/05, 9/14/05 & 5/4/07
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION***Election***

Applicant's election with traverse of Species IV (Figure 19) in the reply filed on 9/17/07 is acknowledged. The traversal is on the ground that there is no significant burden on the Examiner to examine all of the species and claims. This is not found persuasive because the examination of six different embodiments and 18 claims is clearly more burdensome than the examination of a single embodiment and a lesser amount of claims.

Further, the Applicant has indicated that claims 7-10, 13, 16, 17 and 20 are readable on the elected embodiment, however, claim 13 depends from non-elected claim 1. Accordingly, claims 7-10, 16, 17 and 20 are considered to read on the elected embodiment and will be examined herein while claims 1, 3-5, 11-15, 18 and 19 are hereby withdrawn from further consideration.

The requirement is still deemed proper and is therefore made FINAL.

Abstract

The abstract of the disclosure is objected to because phrases that can be implied, such as "There is disclosed" and "According to the present invention" should not be present therein. Further, the abstract should be limited to 150 words and a single paragraph. Correction is required. See MPEP § 608.01(b).

Application/Control Number: 10/522,376

Page 3

Art Unit: 3751

Drawings

The drawings are objected to because Figure 1 should be labeled "Prior Art" since the structure defined therein is already known (see the brief description of Figure 1 on page 4).

Further, several of the figures are made up of two or more actual figures (see, for example, Figures 1, 2, 6 and 7). These actual figures should be separately labeled (i.e., Figure 1a and Figure 1b) and separately addressed in the "Brief Description of the Drawings" section of the specification.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Application/Control Number: 10/522,376

Page 4

Art Unit: 3751

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 16, 17 and 20 are rejected under 35 U.S.C. 101 because these claims are defining two different statutory classes of inventions (i.e., both a process and a machine are recited). See MPEP 2173.05(p) II.

Claim Rejections - 35 USC § 112

Claims 7-10, 16, 17 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 7, it is unclear as to whether or not the cosmetic is intended to be part of the claimed combination, i.e., on line 2 it appears that the cosmetic is not intended to be claimed, on line 5 however, the language is such that the cosmetic is being claimed. Should the Applicant intend to claim the cosmetic, an antecedent basis for the cosmetic should be defined. Should the Applicant not intend to claim the cosmetic, "adapted to be"/"for" language should be used when referring thereto.

In regard to claim 8, an antecedent basis for "the side which receives a force" should be defined.

Application/Control Number: 10/522,376

Page 5

Art Unit: 3751

In regard to claims 16, 17 and 20, these claims are indefinite/ambiguous in that two different statutory classes of invention (i.e., a process and machine) are being claimed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by

Holloway.

In regard to claim 7, Holloway discloses a stick type cosmetic container comprised of an outer cylinder 14, 20, a sleeve 26, an inner container 34 having a small projection 38, a guiding groove 40 on the sleeve and a helical groove 24 for receiving the small projection wherein the lower end of the groove is open and a locking projection 126/128 corresponding to a "locking notch" (the portion of projection 38 that contacts this locking projection) is provided at the lower portion of the groove and acts as a retaining mechanism for the small projection.

In regard to claim 8, the locking projection is positioned as claimed.

Application/Control Number: 10/522,376

Page 6

Art Unit: 3751

In regard to claim 9, the locking projection 126 (see Figure 5) has a substantially horizontal upper surface and a sloped lower surface.

In regard to claim 10, there are two locking projections 126, 128 provided at two levels.

Claims 7, 8 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Kurihara et al. (hereinafter Kurihara).

In regard to claim 7, Kurihara discloses a stick type cosmetic container comprised of an outer cylinder 7 a sleeve 2, an inner container 5 having a small projection 6, a guiding groove 4 on the sleeve and a helical groove 8 for receiving the small projection wherein the lower end of the groove is open and a locking projection 11 corresponding to a "locking notch" (the portion of projection 6 that contacts this locking projection) is provided at the lower portion of the groove and acts as a retaining mechanism for the small projection.

In regard to claim 8, the locking projection is positioned as claimed.

In regard to claim 20, the container is filled as claimed (see column 7, lines 48-58).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Kim and Davis references are cited for disclosing other pertinent structures.

Application/Control Number: 10/522,376

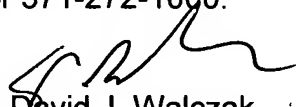
Page 7

Art Unit: 3751

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huson Gregory can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
10/16/07